

**Background Checks for Students and Faculty Participating in Clinical Studies at a Direct Care Entity as Described by Article 23, Section 44-7-2910**

The purpose of this enclosure is to assist direct care entities and educational institutions in applying Article 23, Section 44-7-2810, to students or faculty who will be doing clinical studies with the direct care entity as part of their educational curriculum requirement. This enclosure does not apply to minors but does apply to faculty members who supervise minors providing “hands-on” direct care in a licensed direct care entity affected by Article 23.

**NOTE: These procedures are intended as a guide only. They do not exceed applicable state regulations/laws or federal regulations/laws relevant to employee eligibility. The procedures do not address or exempt facilities from federal regulations applicable to facilities that participate in the Medicare/Medicaid reimbursement program through the Centers for Medicare and Medicaid Services (CMS), (See Enclosure 1 for Website References and contact information).**

Direct care entities receiving inquiries from educational institutions regarding criminal background checks for students or faculty should request that the institution first read our procedures memorandum. You can either provide them a copy of the memorandum or direct them to our Website at <http://www.scdhec.net/hr>.

Students/faculty members are permitted to begin their clinical study with the direct care entity so long as the criminal background check has been initiated, even though the results have not been received. This is in accordance with Article 23, Section 44-7-2920 of the SC Code of law “... **pending the results of the criminal record check, a person temporarily may be employed or may contract as a direct caregiver with a direct care entity.**”

Article 23, Section 44-7-2920 of the SC Code of law states “The criminal record check is not required to be repeated as long as the person remains employed by or continues to contract with a direct care entity; however, if a person is not employed by or is not under contract for one year or longer with a direct care entity, the criminal record check must be repeated before resuming employment or contracting with a direct care entity.” The Department has determined that **as long as the student remains enrolled with the same educational institution with no more than a twelve-month break in enrollment, then the direct care entity will view this as continuous employment. The same shall hold true for a faculty member who is continuously employed by the same educational institution.** If there has been a break of service or enrollment for twelve-months or more, then a new background check must be initiated.

Students/faculty members are viewed as volunteers and therefore qualify for a reduced fee for both state and federal background checks. The educational institution and the direct care entity are responsible for determining who should pay for the cost of the background checks. Payment for state and federal background checks shall be in accordance with enclosure 1.

**State Background Checks:** For state background checks, educational institutions may obtain results on students/faculty members directly through SLED without having to go through the

direct care entity. However, the SLED Form CJ-055 cannot be used to request a background check from SLED. This form is specifically designed for use by licensed direct care entities. Educational institutions will need to contact SLED to request SLED Form 110288 or "Records Check Form-Nonprofit" for charitable organizations. SLED Form 110288 is also attached to enclosure 7. They may also conduct the check through SLED using the Internet site at <http://www.sled.state.sc.us>.

At present, the Internet site does not recognize an \$18.00 fee to screen volunteers. The institution will have to pay the regular \$25.00 fee to obtain results via the Internet. Otherwise, they can pay the \$18.00 fee over the counter at the SLED office or through the mail. If the institution qualifies as a charitable organization, then the \$8 fee will apply and can be paid via the Internet. (See enclosure 1).

**Federal Background Checks:** If a student/faculty does not meet the twelve-month residency requirement of Section 44-7-2910, a federal fingerprint background check must be conducted in addition to the SCSLED background check. The educational institution can obtain the fingerprint cards through our office. Contact numbers and procedures for conducting federal background checks are contained in enclosure 1 of this memorandum. If you initiate a fingerprint check on a student/faculty, you must provide each direct care entity where the student or faculty will work with a letter to that effect.

Because students/faculty members are classified as volunteers, the Department can only inform the educational institution by letter that the student/faculty has or does not have a criminal conviction or has pled no contest (*nolo contendere*). A copy of our letter must be sent to each direct care entity where the student/faculty is, will be, or has conducted his/her clinical study.

Since students are classified as volunteers, the fee for an FBI background check is \$18.00. However, an FBI background check may not be necessary if the results of the state background check prohibit the student or faculty member from working for the direct care entity based on the policies of the direct care entity or where prohibited by DHEC regulation.

Our authority to enforce Section 44-7-2910 is limited to the licensed direct care entities that are affected by the law. The Department holds the direct care entity ultimately responsible for compliance with the law. If the following procedure is used, you will be in compliance with Section 44-7-2910:

1. The educational institution must have a written policy. A copy of the policy must be on file at each direct care entity where students and faculty will be conducting their clinical studies. The policy must fully explain:
  - a. How the criminal background checks are being conducted.
  - b. The measures that are in place to maintain custody and integrity of the results.

2. The educational institution must have a written contract with the direct care entity. A copy of the contract must be on file at the direct care entity and a copy shall also be provided to the Division of Health Licensing. The contract must stipulate that:
  - a. Criminal background checks will be conducted by the educational institution in accordance with Section 44-7-2910 of the SC Code of Laws and the procedures contained in this memorandum.
  - b. The institution shall be required to provide a copy of the background results to the direct care entity, or to our Department for inspection purposes, within 2 hours after receiving a request on any student or faculty member.
3. Before a student or faculty member can work with a direct care entity, the educational institution must provide a letter to the direct care entity stating that a criminal background check has been initiated in accordance with Section 44-7-2910 of the SC Code of Laws and the procedures contained in this memorandum. The names of the students and/or faculty members must be on the letter.
4. In lieu of the actual results being provided to the direct care entity, the institution may provide a letter stating that a criminal background check has been conducted in accordance with Section 44-7-2910 of the SC Code of Laws and the procedures contained in this memorandum, and that the individual has no criminal record that would prohibit him/her from working with the direct care entity based on the policies of the direct care entity or applicable DHEC regulations. The names of the students and/or faculty must be on the letter.
5. The educational institution understands that possibility exists that the results of a state or federal background check may not be available until after the student/faculty has finished his/her clinical study and is no longer working with the direct care entity. The educational institution understands that regardless of this happening, the educational institution is still required to follow through with the background checks as stipulated in this memorandum and in Article 23.
6. The educational institution understands and agrees that:
  - a. Criminal background checks on students/faculty members must be kept on file at the educational institution as long as they remain affiliated with the institution, but no less than two years after they are no longer enrolled or employed.
  - b. They will notify the direct care entity when a faculty member or student is no longer with the institution so that the direct care entity can dispose of the file appropriately.

Direct care entities:

1. Shall be required to keep a copy of all letters sent by the educational institution regarding background checks initiated on students and faculty members for a period of two years from the date notification is received from the educational institution that the student or faculty member is no longer enrolled or employed.
2. Shall be required to keep a copy of all letters sent by the educational institution clearing or prohibiting the student or faculty member from working with the direct care entity for a period of two years from the date notification is received from the educational institution that the student or faculty member is no longer enrolled or employed.
3. Shall be required to keep a copy of the written contract that was made with the educational institution, for a period of two years after the contract is no longer in effect.
4. Shall be required to keep a copy of the educational institutions written policy for conducting criminal background checks for a period of two years after the written contract is no longer in effect.
5. Are responsible for ensuring that the educational institution is abiding by the written contract and the written policies for conducting criminal background checks.